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Proposed new rule 502 passed by AICPA Council 9/17/77 (awaiting mail vote of AICPA membership); Exposure draft (American Institute of Certified Public Accountants), 1977, Sept. 28

American Institute of Certified Public Accountants. Task Force on Advertising

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AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Proposed New Rule 502 passed by AICPA Council 9/17/77 (awaiting mail vote of AICPA membership)

Rule 502 - Advertising or Other Forms of Solicitation. A member shall not seek to obtain clients by advertising or other forms of solicitation in a manner that is false, misleading or deceptive. The direct uninvited solicitation of a specific potential client is prohibited.

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FOR COMMENT

Proposed Interpretations under Rule 502 (subject to approval of new Rule 502 by mail ballot of members)

Interpretation 502-1 - Informational Advertising. Advertising that is informative and objective is permitted. Such advertising should be in good taste and be professionally dignified. There are no restrictions on the type of advertising or media, frequency of placement, size, art work or type style. Some examples of informative and objective content are:

1. Information about the member and the member's firm such as:
  - a. Name, addresses, telephone numbers, number of partners, shareholders or employees, office hours, foreign language competence and date the firm was established.

- b. Services offered and fees for such services, including hourly rates and fixed fees.
  - c. Educational and professional attainments, including date and place of certifications, schools attended, dates of graduation, degrees received and memberships in professional associations.
2. Statements of policy or position made by a member or a member's firm related to the practice of public accounting or addressed to a subject of public interest.

Interpretation 502-2 - False, Misleading or Deceptive Acts.

Advertising or other forms of solicitation that are false, misleading or deceptive are not in the public interest and are prohibited. Such activities include those that:

- 1. Create false or unjustified expectations of favorable results;
- 2. Imply the ability to influence any court, tribunal, regulatory agency or similar body or official;
- 3. Consist of statements that are self-laudatory which are not based on verifiable facts;

4. Make incomplete comparisons with other CPAs;
5. Contain testimonials or endorsements;
6. Contain any other representations that would be likely to cause a reasonable person to misunderstand or be deceived.

Interpretation 502-3 - Other Forms of Solicitation. CPAs may engage in a variety of activities to enhance their reputations and professional stature with the objective of expanding their clientele. Such indirect forms of solicitation, which include giving speeches, conducting seminars, distributing professional literature and writing articles and books, are considered to be in the public interest and are permitted. However, a direct uninvited approach by a member seeking to render services to a specific potential client is prohibited because such activity tends to promote exaggerated and unsupported claims and the use of misleading and deceptive sales techniques. Such approaches are not susceptible to monitoring, verification or control by the profession.

Interpretation 502-4 - Self-designation as Expert or Specialist. Claiming to be an expert or specialist is prohibited because an AICPA program with methods for recognizing competence is specialized fields has not been developed and self-designations would be likely to cause misunderstanding or deception. A member or a member's firm may indicate the services offered but may not state that the practice is limited to one or more types of service.

## REPORT OF THE TASK FORCE ON ADVERTISING

The Task Force on Advertising was appointed by the Chairman of the Professional Ethics Division's Executive Committee in response to adoption of a resolution by the AICPA Board of Directors at its October 1976 meeting. That resolution requested the Ethics Division to evaluate the present advertising rule with respect to the interests of the public and the profession; to evaluate the impact on the profession if any part of the rule was to be declared invalid by a court; and to develop proposed modifications to the present rule if it is determined that the interest of the public and the profession would be better served by such modifications. The Board requested that the Division's evaluation and proposals be reported back to the Board of Directors.

The Task Force on Advertising has been meeting regularly since December 15, 1976. During its discussions it consulted with the AICPA's outside legal counsel.

It was apparent to the Task Force that its initial task was to evaluate and attempt to perceive the public interest and the changes that may have occurred in it. This included consideration of the positions and statements of various consumer groups as they could be ascertained by the Task Force.

In the course of its deliberations the Task Force considered actions such as that by the Federal Trade Commission against the American Medical Association, the Justice Department against the American Bar Association and investigation of the AICPA by both these regulatory bodies. It also considered the Supreme Court decision in the Goldfarb and later Bates cases, a proposed model code of ethics developed by the National Association of State Boards of Accountancy and recent changes that had been made in existing regulations of various state boards of accountancy.

The Task Force considered and rejected many of the traditional arguments against advertising. It believes that the competence and quality of professional accounting services are not necessarily enhanced by the prohibition against advertising. The Task Force concluded that the public has a paramount interest in a free flow of information concerning the availability of accounting services and that the flow of information should only be curtailed when there are counterbalancing public interests involved. For example, if certain information would tend to deceive or mislead the public, it should be prohibited. The Task Force concluded that the type of media used in advertising was of secondary importance.

The Task Force concluded that the paramount need of the public is for information and that in this respect the public interest has changed since the AICPA rule on advertising was originally adopted. The Task Force believes the need for information is genuine and that the earlier need to shield the public in this regard is now of less importance.

There was concern by the Task Force that the credibility and dignity of the CPA profession could be diminished by advertising. Consideration was given to whether removal of restrictions on advertising would erode the CPA's independence in the eyes of the public. On balance, the Task Force believes that the credibility and dignity of the profession would not be better served by retaining restrictions against advertising.

In sum, the Task Force believes that advertising which is truthful and not misleading or deceptive should be permitted. It believes that false, misleading or deceptive advertising by members should be prohibited. Violations of these rules should be investigated and punished where they occur.

Accordingly, the Task Force on Advertising concluded that advertising and other forms of solicitation should be restricted only where such activity is false, misleading or deceptive, or likely to be so.